

111TH CONGRESS  
1ST SESSION

# H. R. 11

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2009

Mr. GEORGE MILLER of California (for himself, Ms. DeLauro, Ms. HIRONO, Mr. RUPPERSBERGER, Ms. SCHAKOWSKY, Mr. STARK, Mr. ACKERMAN, Ms. CLARKE, Mr. HOLT, Mr. LEVIN, Mr. KILDEE, Mrs. MCCARTHY of New York, Ms. SUTTON, Mr. VAN HOLLEN, Mr. ELLISON, Ms. EDWARDS of Maryland, Mr. GRIJALVA, Mr. NADLER of New York, Ms. NORTON, Mr. OBERSTAR, Ms. MATSUI, Mrs. TAUSCHER, Mr. PAYNE, Mr. HODES, Mr. JACKSON of Illinois, Ms. LEE of California, Mr. ROTHMAN of New Jersey, Mr. SERRANO, Mr. WEINER, Mr. WU, Mr. COHEN, Mr. CONYERS, Mr. HARE, Mr. ISRAEL, Mr. LARSON of Connecticut, Mr. SESTAK, Mr. ABERCROMBIE, Mr. ANDREWS, Mr. ARCURI, Mr. BACA, Mr. BECERRA, Ms. BERKLEY, Mr. BISHOP of New York, Mr. BLUMENAUER, Mr. BOSWELL, Mr. BOUCHER, Mr. BRADY of Pennsylvania, Mrs. CAPPS, Mr. CARNAHAN, Mr. CARSON of Indiana, Mr. CLAY, Mr. CLEAVER, Mr. CLYBURN, Mr. COURTNEY, Mr. CUMMINGS, Mr. DAVIS of Alabama, Mrs. DAVIS of California, Mr. DEFazio, Ms. DEGETTE, Mr. DICKS, Mr. ENGEL, Mr. FARR, Mr. FATTAH, Mr. FILNER, Ms. GIFFORDS, Mrs. GILLIBRAND, Mr. HALL of New York, Mr. HASTINGS of Florida, Mr. HINCHEY, Mr. HINOJOSA, Mr. HONDA, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. JOHNSON of Georgia, Mr. KAGEN, Mr. KIND, Mr. LANGEVIN, Mr. LEWIS of Georgia, Mr. LIPINSKI, Mr. LOEBSACK, Ms. ZOE LOFGREN of California, Mrs. LOWEY, Mr. LYNCH, Mr. MAFFEI, Mrs. MALONEY, Mr. MARKEY of Massachusetts, Ms. MCCOLLUM, Mr. McDERMOTT, Mr. MICHAUD, Mr. MILLER of North Carolina, Mr. MOORE of Kansas, Ms. MOORE of Wisconsin, Mr. MORAN of Virginia, Mr. PATRICK MURPHY of Pennsylvania, Mr. OBEY, Mr. OLIVER, Mr. PALLONE, Mr. PASCRELL, Mr. PETERS, Mr. REYES, Mr. RODRIGUEZ, Ms. LINDA T. SANCHEZ of California, Ms. LORETTA SANCHEZ of California, Mr. SARBANES, Mr. SCHIFF, Ms. SCHWARTZ, Mr. SCOTT of Georgia, Mr.

SCOTT of Virginia, Ms. SHEA-PORTER, Mr. SHERMAN, Mr. SIRES, Mr. SKELTON, Ms. SLAUGHTER, Ms. SPEIER, Mr. TIERNEY, Mr. TOWNS, Ms. TSONGAS, Mr. VISCLOSKY, Mr. WALZ, Ms. WASSERMAN SCHULTZ, Ms. WATERS, Ms. WATSON, Mr. WAXMAN, Mr. WELCH, Mr. WEXLER, Ms. WOOLSEY, Mr. YARMUTH, Ms. HARMAN, Ms. KAPTUR, Mr. KUCINICH, Mr. MCMAHON, Mr. MURPHY of Connecticut, Mr. PERRIELLO, Ms. PINGREE of Maine, Mr. POMEROY, Mr. RYAN of Ohio, Mr. THOMPSON of Mississippi, Ms. VELAZQUEZ, Mr. HEINRICH, Mr. BAIRD, Ms. BALDWIN, Mr. BERMAN, Mr. BERRY, Ms. BORDALLO, Mr. BRALEY of Iowa, Ms. CORRINE BROWN of Florida, Mr. BUTTERFIELD, Mr. CAPUANO, Mr. DAVIS of Illinois, Mr. DINGELL, Mrs. CHRISTENSEN, Mr. DOGETT, Mr. LARSEN of Washington, Mr. WATT, Mr. STUPAK, Ms. CASTOR of Florida, Mr. RUSH, Mr. ORTIZ, Mr. AL GREEN of Texas, Mr. GONZALEZ, Mr. COOPER, Mr. GENE GREEN of Texas, Ms. RICHARDSON, Mr. HIGGINS, Ms. JACKSON-LEE of Texas, Mr. THOMPSON of California, Mr. COSTELLO, Mr. KENNEDY, Mr. DOYLE, and Mr. HOYER) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Lilly Ledbetter Fair  
 5       Pay Act of 2009”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The Supreme Court in *Ledbetter v. Good-*  
4 *year Tire & Rubber Co.*, 550 U.S. 618 (2007), sig-  
5 nificantly impairs statutory protections against dis-  
6 crimination in compensation that Congress estab-  
7 lished and that have been bedrock principles of  
8 American law for decades. The *Ledbetter* decision  
9 undermines those statutory protections by unduly re-  
10 stricting the time period in which victims of dis-  
11 crimination can challenge and recover for discrimi-  
12 natory compensation decisions or other practices,  
13 contrary to the intent of Congress.

14 (2) The limitation imposed by the Court on the  
15 filing of discriminatory compensation claims ignores  
16 the reality of wage discrimination and is at odds  
17 with the robust application of the civil rights laws  
18 that Congress intended.

19 (3) With regard to any charge of discrimination  
20 under any law, nothing in this Act is intended to  
21 preclude or limit an aggrieved person's right to in-  
22 troduce evidence of an unlawful employment practice  
23 that has occurred outside the time for filing a  
24 charge of discrimination.

1           (4) Nothing in this Act is intended to change  
2           current law treatment of when pension distributions  
3           are considered paid.

4 **SEC. 3. DISCRIMINATION IN COMPENSATION BECAUSE OF**  
5                   **RACE, COLOR, RELIGION, SEX, OR NATIONAL**  
6                   **ORIGIN.**

7           Section 706(e) of the Civil Rights Act of 1964 (42  
8 U.S.C. 2000e–5(e)) is amended by adding at the end the  
9 following:

10          “(3)(A) For purposes of this section, an unlawful em-  
11 ployment practice occurs, with respect to discrimination  
12 in compensation in violation of this title, when a discrimi-  
13 natory compensation decision or other practice is adopted,  
14 when an individual becomes subject to a discriminatory  
15 compensation decision or other practice, or when an indi-  
16 vidual is affected by application of a discriminatory com-  
17 pensation decision or other practice, including each time  
18 wages, benefits, or other compensation is paid, resulting  
19 in whole or in part from such a decision or other practice.

20          “(B) In addition to any relief authorized by section  
21 1977A of the Revised Statutes (42 U.S.C. 1981a), liability  
22 may accrue and an aggrieved person may obtain relief as  
23 provided in subsection (g)(1), including recovery of back  
24 pay for up to two years preceding the filing of the charge,  
25 where the unlawful employment practices that have oc-

1 curred during the charge filing period are similar or re-  
 2 lated to unlawful employment practices with regard to dis-  
 3 crimination in compensation that occurred outside the  
 4 time for filing a charge.”.

5 **SEC. 4. DISCRIMINATION IN COMPENSATION BECAUSE OF**  
 6 **AGE.**

7 Section 7(d) of the Age Discrimination in Employ-  
 8 ment Act of 1967 (29 U.S.C. 626(d)) is amended—

9 (1) in the first sentence—

10 (A) by redesignating paragraphs (1) and

11 (2) as subparagraphs (A) and (B), respectively;

12 and

13 (B) by striking “(d)” and inserting

14 “(d)(1)”;

15 (2) in the third sentence, by striking “Upon”

16 and inserting the following:

17 “(2) Upon”; and

18 (3) by adding at the end the following:

19 “(3) For purposes of this section, an unlawful prac-

20 tice occurs, with respect to discrimination in compensation

21 in violation of this Act, when a discriminatory compensa-

22 tion decision or other practice is adopted, when a person

23 becomes subject to a discriminatory compensation decision

24 or other practice, or when a person is affected by applica-

25 tion of a discriminatory compensation decision or other

1 practice, including each time wages, benefits, or other  
 2 compensation is paid, resulting in whole or in part from  
 3 such a decision or other practice.”.

4 **SEC. 5. APPLICATION TO OTHER LAWS.**

5 (a) AMERICANS WITH DISABILITIES ACT OF 1990.—  
 6 The amendments made by section 3 shall apply to claims  
 7 of discrimination in compensation brought under title I  
 8 and section 503 of the Americans with Disabilities Act of  
 9 1990 (42 U.S.C. 12111 et seq., 12203), pursuant to sec-  
 10 tion 107(a) of such Act (42 U.S.C. 12117(a)), which  
 11 adopts the powers, remedies, and procedures set forth in  
 12 section 706 of the Civil Rights Act of 1964 (42 U.S.C.  
 13 2000e–5).

14 (b) REHABILITATION ACT OF 1973.—The amend-  
 15 ments made by section 3 shall apply to claims of discrimi-  
 16 nation in compensation brought under sections 501 and  
 17 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791,  
 18 794), pursuant to—

19 (1) sections 501(g) and 504(d) of such Act (29  
 20 U.S.C. 791(g), 794(d)), respectively, which adopt  
 21 the standards applied under title I of the Americans  
 22 with Disabilities Act of 1990 for determining wheth-  
 23 er a violation has occurred in a complaint alleging  
 24 employment discrimination; and

1           (2) paragraphs (1) and (2) of section 505(a) of  
 2           such Act (29 U.S.C. 794a(a)) (as amended by sub-  
 3           section (c)).

4           (c) CONFORMING AMENDMENTS.—

5           (1) REHABILITATION ACT OF 1973.—Section  
 6           505(a) of the Rehabilitation Act of 1973 (29 U.S.C.  
 7           794a(a)) is amended—

8                   (A) in paragraph (1), by inserting after  
 9                   “(42 U.S.C. 2000e–5 (f) through (k))” the fol-  
 10                  lowing: “(and the application of section  
 11                  706(e)(3) (42 U.S.C. 2000e–5(e)(3)) to claims  
 12                  of discrimination in compensation)”; and

13                   (B) in paragraph (2), by inserting after  
 14                   “1964” the following: “(42 U.S.C. 2000d et  
 15                   seq.) (and in subsection (e)(3) of section 706 of  
 16                   such Act (42 U.S.C. 2000e–5), applied to  
 17                   claims of discrimination in compensation)”.

18           (2) CIVIL RIGHTS ACT OF 1964.—Section 717 of  
 19           the Civil Rights Act of 1964 (42 U.S.C. 2000e–16)  
 20           is amended by adding at the end the following:

21           “(f) Section 706(e)(3) shall apply to complaints of  
 22           discrimination in compensation under this section.”.

23           (3) AGE DISCRIMINATION IN EMPLOYMENT ACT  
 24           OF 1967.—Section 15(f) of the Age Discrimination in  
 25           Employment Act of 1967 (29 U.S.C. 633a(f)) is

1       amended by striking “of section” and inserting “of  
2       sections 7(d)(3) and”.

3   **SEC. 6. EFFECTIVE DATE.**

4       This Act, and the amendments made by this Act, take  
5   effect as if enacted on May 28, 2007 and apply to all  
6   claims of discrimination in compensation under title VII  
7   of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.),  
8   the Age Discrimination in Employment Act of 1967 (29  
9   U.S.C. 621 et seq.), title I and section 503 of the Ameri-  
10   cans with Disabilities Act of 1990, and sections 501 and  
11   504 of the Rehabilitation Act of 1973, that are pending  
12   on or after that date.

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